

Planning Board Minutes
Tuesday, July 12, 2016

APPROVED
8.9.16

The Carver Planning Board met on July 12, at the Carver Town Hall, Meeting Room #4, 108 Main Street, Carver, Massachusetts. This meeting was videotaped for cable cast area 58, channel 15.

Chairman Bruce Maki opened the meeting at 7:00 p.m.

PRESENT: Bruce Maki, Chairman; James Hoffman; Kevin Robinson; William Sinclair; Chad Cavicchi

ALSO PRESENT: Marlene McCollem, Director of Planning and Community Development; Christine Champ, Recording Secretary

NOT PRESENT: N.A.

Continued Public Hearing:

Borrego Solar Systems, Inc.-Special Permit-19C Ward Street (Assessor's Map 120-6-0-R)-to allow a ground-mounted solar power generating facility of approximately 2.77 mW in a Residential/Agricultural District. (Zoning Bylaw §§3100, 3580, 5300).

Filed with the Town Clerk: May 2, 2016

Last Meeting: August 30, 2016

Deadline: September 12, 2016

After the pledge of allegiance, Chairman Maki said the Board was there for the discussion regarding the Borrego setback and sideline with the possibility of an appeal by the Planning Board. Chairman Maki read a memorandum into the record regarding the correct procedures for the Board in filing an appeal. Ms. McCollem said it had been filed with the Town Clerk on the previous Thursday. Chairman Maki continued reading into the record another decision regarding setbacks.

Chairman Maki said the evening's discussion would be regarding whether they felt they should appeal the decision regarding the setbacks and the zero frontage to the lot. He said the concern was somewhere down the line when the solar project was torn down, the lot would be unbuildable and right now, it could be buildable, having an easement going to the lot.

Mr. Sinclair agreed on that point and said the issue at hand was the parcel proposed for solar. The surrounding parcels were acquired during the process and the front parcel landlocks the whole parcel. He noted they are changing from cranberry bogs to an industrial lot and they must get an easement when they file with the Registry of Deeds. Mr. Sinclair feels this is putting the Town at huge risk to all in town, setting a precedent. He feels the board did not exercise caution. He referred to the plan about "shape and topography" of the lot. Mr. Sinclair said they need a variance to gain access to the lot. He felt it circumvented the bylaw.

Mr. Sinclair said, regarding the 200-foot setback, nowhere in the bylaw says it's protection of sound, et cetera. It is implied. Mr. Sinclair said it was clear the community wanted this buffer. Down to 130 feet was wrong, he felt, and it was circumventing the bylaw. Mr. Sinclair did not feel it protected the character of the community. He recommended the Board follow procedure and file an appeal.

Chairman Maki asked if anyone else had anything. Ms. McCollem said there was a condition of the Board that it be recorded. The easement would have to benefit after the transfer.

Chairman Maki asked Mr. Hoffman if he had anything to add. Mr. Hoffman said he felt it was setting a bad precedent. He felt a lot of hard work was put into this and for this to go against it, the Board would not be doing its job if they just let it go. Mr. Hoffman said he joined the Board to protect members of the public.

Chairman Maki said he felt it was a good project but in the wrong spot. He continued, he can get a permit but it is setting a bad precedent and it was not in the interest of the people.

Mr. Sinclair added another point. He said, during hearings, questions had been asked and the reply was purely financial. So, other projects had come in front of the Board and the Board had said no. Mr. Sinclair said, you cannot go back and forth. If a project does not work because of cost, it is not on the Board's decision.

Chairman Maki said he remembered talk of bylaw. He said a lot of cranberry growers said they would not even want solar ray panels near their own bogs. Chairman Maki continued, nobody complained but we thought it was important to have a solar panel bylaw. In this case, it is not abutting. It is someone else's property.

Chairman Maki asked if anyone else had comments.

Mr. Robinson said there had been a lot of work to establish these setbacks and frontage and he agreed with Chairman Maki. He said, we sat here and agreed this was what we want to do. Mr. Robinson said he agreed with Mr. Sinclair, Mr. Maki and Mr. Hoffman.

Chairman Maki said members had made comments and the members of the Board must vote.

Mr. Sinclair motioned to file an appeal against the Zoning Board decision of the Borrego Solar array. Mr. Hoffman seconded the motion. It was voted unanimously.

Mr. Rich Serkey, for Borrego, wanted to speak. He said, with respect to the concern of what the status of the lot would be after dismantling, the variance was for this use. Mr. Serkey said it would no longer be a buildable lot and if someone wanted to build, they would have to come back for a variance.

Mr. Serkey said, secondly, the concern about the public interest in enforcing the bylaw literally, no person at the Zoning Board or Planning Board were saying the two petitions were being denied. He said that told him there was a need to enforce bylaws. Mr. Serkey said no one was there from Canterbury Drive. He added, homeowners, or no one from other parts of town were there to object.

Thirdly, added Mr. Serkey, if you appealed another decision of another board, he thought you needed counsel. He said he thought you needed to talk to the town administrator about funding the appeal.

Mr. Serkey said the next issue, when a Board goes against another, you should think about it; that gridlock in the country is small.

Finally, per Mr. Serkey, the variance granted did not relate to how profitable this would be but to whether the project could go forward. He said these were just his points he wanted to raise.

Chairman Maki and Mr. Sinclair thanked him.

Mr. Serkey just wanted to add, describing on the color-coded map, the land owned by Cobb and the land which

had been sold to others. He said he was done.

Chairman Maki asked Ms. McCollem, if we do appeal, there will be some discussions between the boards, and how will this go? Ms. McCollem said she would defer to Town's Counsel for advice. She suggested they sign the paper for the appeal first and then ask Town Counsel. Chairman Maki said if they did this he did not see how they could change their mind down the road and if they did, could it be dropped? Ms. McCollem said they must meet with Town Counsel to discuss what they were trying to achieve and listen to their advice.

Ms. McCollem said she did see Attorney Serkey's copy. She said, procedurally, the date that was filed was Monday, July 11, at 11:30 a.m. which she thought fell outside of their timely manner. Ms. McCollem thought calendar days, not business days. She said she would talk to Town Counsel about the matter. Ms. McCollem said Monday, July 4, 2016, was a holiday and she thought Monday would not count toward the 14 days. She thought the deadline was Friday, the 8th. Ms. McCollem said she had a question about that and would find out.

Mr. Hoffman asked, what if they file outside of the date? If not filed within the time frame, according to Ms. McCollem, essentially it would be approved.

Chairman Maki said they had a motion and it was seconded so it was unanimous. Ms. McCollem said she would let Town Counsel know and would let him know when she had further instructions. Mr. Sinclair and Chairman Maki expressed their thanks.

Other Business:

A. Planning Board Member Notes

None.

B. Minutes - July 5, 2016

Mr. Sinclair made a motion to table the minutes until the Board could read and put at the next meeting. Mr. Hoffman seconded the motion. It was voted unanimously to table the minutes.

C. Correspondence (if any)

None.

D. Next meeting date: July 26, 2016 at 7:00 p.m.

Mr. Sinclair made a motion to have a meeting on July 26, 2016. Mr. Hoffman seconded the motion. The date was approved unanimously.

E. Adjournment

Mr. Sinclair made a motion to adjourn the meeting. Mr. Hoffman seconded the motion. It was voted unanimously to adjourn at 7:34 p.m.

EXHIBITS

- A. Agenda
- B. Minutes of July 12, 2016



TOWN OF CARVER

Permitting Departments

PUBLIC MEETING NOTICE

POSTED IN ACCORDANCE WITH THE PROVISIONS OF M.G.L. CHAPTER 30A, SECTION 20B

PLANNING BOARD MEETING AGENDA

July 12, 2016

7:00 PM

Carver Town Hall Room #4

Discussion:

Variance granted by the ZBA for frontage and sideline setback for the proposed Borrego solar array at 19C Ward Street. Possible appeal by the Planning Board.

Other Business

- A. Planning Board Member Notes
- B. Minutes --July 5, 2016
- C. Correspondence (if any)
- D. Next meeting date: July 26, 2016
- E. Adjournment



TOWN OF CARVER

Zoning Board of Appeals

Borrego Solar Systems, Inc.

Case # 16-974

June 23, 2016

A Petition was filed seeking a Variance under Sections 2320 and 5222 of the Carver Zoning Bylaws for relief from the sideline setback requirement and frontage requirement for a proposed ground mounted solar photovoltaic installation of approximately 2.77 MW at 19C (Rear) Ward Street (Map 120-6) in a Residential Agricultural District. This Decision grants relief from the required 200 foot sideline setback for a solar array, and varies the requirements of the bylaw to provide a sideline setback of 130 feet for the proposed array. This Decision also grants relief from the required 150 foot frontage requirement for a lot in an Agricultural/Residential District, and varies the requirements of the bylaw to provide 0 feet of frontage for the proposed array.

NOTICE

Pursuant to notice duly published in the Carver Reporter, duly posted with the Town Clerk, and by written notice mailed to all parties in interest, pursuant to MGL Ch. 40A, Public Hearings were held on June 9, 2016 and June 23, 2016. Sitting on the case were Chairman Stephen G. Gray, Vice-Chairman Sharon Clarke, Members James Nauen, Steven Maynard, and Eric Mueller.

EVIDENCE

The Applicant provided the Board with the following written documentation for the record:

1. A Plan entitled: *Special Permit and NOI Plans; 2,770.56 kW DC STC Rated Solar Electric System; 19C Ward St, Carver, MA 02330*, prepared by Borrego Solar, dated March 31, 2016.

In addition to the written record, the Board relied on Public Hearing testimony and answers to numerous questions posed by Board Members to the Applicant's project representatives and its attorney; and a site visit in order to render its Decision.

No opposition was received from any members of the public.

FINDINGS

The Board found that owing to circumstances relating to the shape and/or topography of the lot, but not affecting the district generally, a literal enforcement of the provision of the Bylaw

Monahan
Filed July 11, 2016
@ 11:30 am

would involve substantial hardship to the Petitioner. Relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the Bylaw.

In particular, the Board found that there were unique features of the site that supported its conclusions. The side setback variance was requested for the west side of the property, where the neighboring parcel is a cranberry bog and the closest residence is approximately 650 feet from the project parcel. This project parcel is also screened by a dense layer of trees. Accordingly, the purpose of the 200 foot setback requirement, to wit: the creation of a visual and noise buffer between a solar project and abutters, was found to be satisfied in this specific instance, notwithstanding the grant of the variance.

Further, the variance from the frontage requirement will not create overcrowding and will not result in any impacts on abutting properties as, following construction, the project will be monitored remotely and there will be minimal traffic on the easement driveway leading to the project site, to wit: access approximately two to three times annually for mowing and/or emergency repairs.

Finally, the variance from the frontage requirement will not create separate building lots, as the stated intent of the Petitioner is to combine the parcel in question with an abutting parcel under common ownership of the Petitioner.

DECISION

Per Article 5, Section 5222 of the Carver Zoning Bylaws, and Section 10 of M.G.L. Chapter 40A, the Board granted a sideline variance of 70 feet and a frontage variance of 150 feet owing to the shape and topography of the subject lot pursuant to Section 2320. The variances are granted solely for the subject project and the use presented on the submitted Plan, which use is subject to the grant of a Special Permit issued by the Carver Planning Board; the Plan is incorporated by reference and made part of this Decision, as stated specifically, below.

CONDITIONS OF THE GRANT

- 1) A single, motion-activated security light, installed on a 9-foot pole is required.
- 2) A security fence shall be installed around the project.
- 3) Preference will first be given to residents of the Town of Carver with regard to any discount realized on electric bills on account of the subject project described herein, said preference to be publicized by utilizing multiple types of notifications, including but not limited to, notice to the Board of Selectmen for the Town of Carver and publication in the Carver Reporter newspaper.

A Motion was made, duly seconded, and voted unanimously to approve the above specially permitted use of the property, with the above-enumerated conditions. A Plan entitled: *Special Permit and NOI Plans; 2,770.56 kW DC STC Rated Solar Electric System; 19C Ward St, Carver, MA*

02330, prepared by Borrego Solar, dated March 31, 2016, is hereby incorporated herein and made part of this Decision.

Any person aggrieved by this Decision may appeal to a court of competent jurisdiction pursuant to MGL Ch. 40A, Sec. 17 within 20-days of the date that this Decision is filed with the Carver Town Clerk.

Board of Appeals

Stephen G. Gray, Chairman

Sharon Clarke, Vice-Chairman

James Nauen

Steven Maynard

Eric Mueller

Date

McCollem, Marlene

From: John J. Goldrosen <JGoldrosen@k-plaw.com>
Sent: Friday, July 01, 2016 12:01 PM
To: McCollem, Marlene
Cc: Milanoski, Michael; Gregg J. Corbo
Subject: Carver: Planning Board request for legal advice

Dear Members of the Planning Board:

I am responding to the request of the Town Planning Board ("Board") chairman for information as to the procedure that the Board would follow to appeal a decision by the Town Zoning Board of Appeals ("ZBA").

Under the State Zoning Act, G.L. c. 40A, §17, as interpreted by the courts, the Board is a "municipal board or officer" with duties related to zoning, and has authority under that statute to appeal a decision of the ZBA. The procedure for appealing a decision is essentially the same as it would be for a private party appealing a ZBA decision. Within twenty days of the date that the ZBA decision is filed with the Town Clerk, the Board would have to (i) file a complaint for judicial review in either the Land Court, Superior Court, District Court, or Housing Court, and (ii) file notice with the Town Clerk that the complaint has been filed, along with a copy of the complaint. The complaint that is filed with the Court is to include a copy of the decision from which the Board is appealing. The complaint is required to name as defendants all of the members of the ZBA, as well as the applicant before the ZBA.

It is my understanding that the Board's inquiry relates to two recent ZBA decisions to grant variances. Further, I understand that the two ZBA decisions have been voted by the ZBA, but as of July 1, 2016, written decisions have not yet been filed with the Town Clerk. As noted above, the twenty-day appeal period begins to run when a written decision is filed with the Town Clerk.

Please feel free to contact me with any further questions concerning this procedure.

Very truly yours,

John J. Goldrosen, Esq.
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